



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 12, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas Kinane, M.D.
[REDACTED]

Ian H. Sliverman
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Thomas Kinane, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-047) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board.

Six copies of all papers must also be sent to the attention of Judge Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

-----X
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IN THE MATTER :
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OF :
:
THOMAS KINANE, M.D. :
:
-----X

DETERMINATION

AND

ORDER
19-047

A Notice of Hearing and Statement of Charges dated December 14, 2018, were served upon Thomas Kinane, M.D. (Respondent.) A hearing was held on February 14, 2019, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **Mary E. Rappazzo, M.D.**, Chairperson, **Lyon M. Greenberg, M.D.** and **David Irvine, DHSc, P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **Dawn MacKillop-Soller**, Administrative Law Judge, served as the administrative officer.

The Department appeared by Ian H. Silverman, Associate Counsel for the Bureau of Professional Medical Conduct. The Respondent was duly served with the charges and notice of hearing pursuant to PHL § 230(10)(d)(i), but failed to appear. (Exhibits 2-4.) The Hearing Committee received and examined documents from the Department (Exhibits 1-6) and a transcript of the proceeding was made.

The Hearing Committee votes (3-0) to sustain the charge that the Respondent committed professional misconduct as defined in Education (Educ.) Law § 6530(9)(a)(iii) and determined, pursuant to PHL § 230-a, to impose the penalty of censure and reprimand.

JURISDICTION

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(iii) by being convicted of a crime under the laws of another jurisdiction, "and which, if committed within this state, would have constituted a crime under New York state law." Hearing procedures are set forth in Department regulations at 10 NYCRR 51.11(d). The Department had the burden of proving its case by a preponderance of the evidence. PHL § 230(10)(f).

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On August 20, 1984, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 159679. (Exhibit 5.)
2. On November 13, 2015, the Respondent was convicted in the Circuit Court of the State of Oregon for the County of Deschutes after his plea of guilty to Reckless Driving, a misdemeanor, in violation of Oregon Revised Statute § 811.140. The Respondent was ordered to pay a fine in the amount of \$500. (Exhibit 6.)

DISCUSSION

The Hearing Committee reviewed the Department's evidence showing the Respondent's plea of guilty to Reckless Driving, a class A misdemeanor, under Oregon law. This conviction establishes the Respondent violated Educ. Law § 6530(9)(a)(iii), which defines professional misconduct to include:

9. (a) Being convicted of committing an act constituting a crime under... (iii) the law of another jurisdiction and which, if committed

within this state, would have constituted a crime under New York state law.

The Respondent's criminal conduct in Oregon consisted of reckless driving. New York also deems it a misdemeanor crime to operate a motor vehicle on a public roadway in a manner that jeopardizes the safety of others. New York Vehicle and Traffic Law § 1212. The Hearing Committee unanimously concludes that since these two laws are substantially the same, the Respondent's conduct in Oregon would have constituted a crime under New York state law, had it been committed in New York.

The Hearing Committee considered the full spectrum of penalties under PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee considered the Respondent's reckless driving, which stemmed from an accident and a driving under the influence of alcohol charge that was dismissed, to represent a serious breach of his civic duty to drive responsibly, but noted his erratic driving did not involve medical decisions or patient care. (Exhibit 6.) Also, the Respondent, who is 74 years old, does not have a history of professional misconduct and, for many years, has been unregistered to practice medicine in New York. (Exhibit 4.) The committee agreed with the Department's recommendation of censure and reprimand. The Hearing Committee disagreed, however, with the Department's request to also impose a \$500 fine because it deemed the fine assessed by the Oregon court a sufficient financial penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct set forth in the Statement of Charges is sustained.
2. The penalty of censure and reprimand is imposed on the Respondent.

3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: Albany, New York
March 8, 2019


Mary E. Rappazzo, M.D.
Chairperson

Lyon M. Greenberg, M.D.
David F. Irvine, DHSc, P.A.

TO: Thomas Kinane, M.D.


Ian H. Silverman
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
THOMAS KINANE, M.D.

STATEMENT
OF
CHARGES

THOMAS KINANE, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 20, 1984 by the issuance of license number 159679 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about November 13, 2015 the Respondent was convicted in the Deschutes County (Oregon) Circuit Court of the misdemeanor of Reckless Driving and was sentenced to a fine of \$500.
- B. Respondent's crime as described above in Oregon would, if committed in New York State, have constituted a crime under New York State law, specifically N.Y. Vehicle and Traffic Law §1212 (Reckless Driving, an unclassified misdemeanor).

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would

have constituted a crime under New York state law (namely N.Y. Vehicle and Traffic Law § 1212) as alleged in the facts of the following:

1. The facts in Paragraph A and B.

DATE: December 14, 2018
Albany, New York



Timothy J. Mahar
Acting Deputy Counsel
Bureau of Professional Medical Conduct